

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

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Joseph W. Sullivan

CLERK

United States Court of Appeals
for the District of Columbia

October Term, 1938.

No. 7243

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LYALL STEGER JR., an infant, by
LYALL O. STEGER, his father and next friend,
Appellant,

vs.

CAROLYN D. FINCH CAMERON,
Appellee.

BRIEF FOR APPELLEE

GEORGE E. SULLIVAN,
Attorney for Appellee.

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BRIEF FOR APPELLEE

I

STATEMENT OF THE CASE

The appeal in this case is from a final judgment at law rendered upon, and in accordance with, verdict of jury, finding against the plaintiff below (appellant here), denying claim for damages based upon alleged negligence of the defendant (appellee here) in the operation of a certain automobile.

No question was, or could have reasonably been, raised below as to the legal sufficiency of the evidence to sustain the verdict, nor is any such question raised here. The question of defendant's negligence, which the jury decided against the plaintiff's claim, was admittedly a jury question. The jury heard and observed the witnesses, and evidently believed those witnesses who testified that the plaintiff was standing still, holding hands with two older children, all three of them waiting for the southbound traffic to pass before crossing further, and that suddenly the plaintiff darted away from his companions and across the southbound traffic, whereupon the brakes of defendant's automobile, which had been applied to slow down the machine as it approached the intersection, were further applied to bring the machine to a stop as promptly as possible. (Trans. 35-45.)

Consequently, the so-called statement of the case contained in appellant's brief is not the kind of statement permitted and required by the rules of this Court, but instead a partisan and incomplete argumentative presentation contrary to the finding of the jury.

Moreover, the treatment in appellant's' brief of so-called questions of law raised below is inaccurate and misleading as to each and every of the four points raised.

POINT "A." — Appellant's point "A," objecting to the ruling of the Court below, that appellant's wit-

ness Dr. Alfaro could not be compelled to give expert testimony without being paid an expert fee, is not only not supported by any cited authority, but appellant has failed to acquaint this Court with two other insuperable objections to appellant's point, (1) that appellant waived the point by failure to state what he expected the testimony of the witness would show, and (2) that the questions asked the witness related solely to the secondary question of damages, and not to the primary question of negligence which the jury has decided against the plaintiff, making the secondary question immaterial. (Trans. 31-35.)

POINT "B."—Appellant's point "B," objecting to the refusal of plaintiff's prayers 4-a, 6 and 6-a relating to the law of negligence on cross-walks at intersections (Trans. 47-49), omits to state the fact that the Court below did grant plaintiff's prayers 4 and 5 (Trans. 57), which fully and properly dealt with the subject.

POINT "C."—Appellant's point "C," objecting to the refusal of five prayers offered by plaintiff dealing with the law of negligence where a child is involved, is very confusing. As a matter of fact, the Court below covered this subject very carefully, even giving the jury a first and a second supplemental instruction, in order to avoid any possible misapprehension (Trans. 60-63). Plaintiff's insistence that his prayer 8-b, which improperly asked that the jury

consider plaintiff's contributory negligence (Trans. 50), is incomprehensible. Even more incomprehensible is the insistence that plaintiff's prayer 8-c should have been granted, which prayer improperly sought to place upon the plaintiff the burden of proving that he was "in the exercise of ordinary care" (Trans. 50-51). Plaintiff's prayer 9 is also obviously indefensible, because it undertakes to inject into the case a discussion of what "may become *gross negligence*" (Trans. 51-52), a factor not present or introducible into the case, which was predicated solely upon a claim of *negligence*. Strange to say, appellant now stands before this Court presenting the absolutely inconsistent claims (1) that the Court below erred in not granting prayers which would have required the jury to consider contributory negligence as applied to the plaintiff, and would also have required the plaintiff to actually disprove such contributory negligence, and (2) that the Court below did not sufficiently withdraw from the jury the question of the plaintiff's contributory negligence (Appellant's Brief, pp. 38-39).

POINT "D."—Appellant's point "D" is a catch-all point, seeking to maintain that the general charge and two supplemental instructions given by the Court below failed to sufficiently cover the subject-matter contained in plaintiff's rejected prayers. This point proceeds, of course, upon the erroneous assumption that such rejected prayers were improper-

ly rejected; whereas not only were such prayers properly rejected, but all proper subject-matter therein was fully and properly covered in what the Court below told the jury. (Trans. 53-63.)

II

ARGUMENT

It is believed that the foregoing statement of the case makes plain (as any proper statement must) that no real question of law is here involved, and that, consequently, no argument is requisite.

The only serious complaint against the Court below is the anomalous one, as already pointed out, that the trial Justice was so vigilant in protecting any rights that the infant plaintiff might have that he resisted efforts of counsel for plaintiff to have placed upon the jury the duty of considering contributory negligence against the plaintiff, and upon the plaintiff the burden of disproving contributory negligence.

It is respectfully and earnestly submitted that the judgment below should be affirmed.

Respectfully submitted,

GEORGE E. SULLIVAN,

Attorney for Appellee.